

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

ADAM T. SMITHSON, et al.,

Plaintiffs,

v.

Civil Action No. 1:15-00583

THERESA B. SMITHSON,

Defendant.

PLAINTIFFS'
MOTION TO REMAND

Now come the Plaintiffs, Adam T. Smithson and Tabitha Young, individually and as Co-Executor and Co-Executrix of the Estate of Willard T. Smithson, by and through their counsel, Jeffry A. Pritt and Pritt Law Firm, PLLC, pursuant to 28 U.S.C. § 1447(c), and do hereby timely move the Court to enter an Order remanding this case back to the Circuit Court of Monroe County, West Virginia.

This motion is based upon the grounds that the Defendant, Theresa B. Smithson, removed this civil action upon the premise that there was a federal question presented by the issues in dispute between the parties hereto pursuant to 28 U.S.C. § 1331. However, while this action does involve the attempted recovery of retirement/pension and 401k plan funds which were paid to the Defendant pursuant to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq., the determination as to how such funds should be distributed has already been made; and, the ERISA plan administrator(s) themselves

are not parties to this action, nor are Plaintiffs challenging the determination as to the how the plan benefits were distributed.

Accordingly, this civil action is merely one pursuant to state contract/family law whereby the Plaintiffs are seeking enforcement of a prenuptial agreement entered into between their decedent and the Defendant which they contend constitutes a valid and enforceable waiver of her right to retain the benefits she has received from the decedent's plans. The United States Court of Appeals for the Fourth Circuit recently conclusively determined that such civil actions are not preempted by ERISA and therefore present no federal question. Andochick v. Byrd, 709 F.3d 296 (4th Cir. 2013). Consequently, this Court does not have jurisdiction to proceed with this matter, and it should therefore be remanded for the reasons set forth above, and for such additional grounds as are set forth in the accompanying Memorandum in Support of Plaintiffs' Motion to Remand.

ADAM T. SMITHSON, et al.
By Counsel

s/ Jeffrey A. Pritt
West Virginia Bar No.: 5573
Attorney for Adam T. Smithson
and Tabitha Young
Pritt Law Firm, PLLC
P.O. Box 708
Union, West Virginia 24983
Telephone: (304) 772-4700
Fax: (304) 772-4705
E-mail: jeffpritt@prittlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of February, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of West Virginia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Jeffrey A. Pritt